IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.
WRIT PETITION NO.1762 OF 1994

Shri G.B.Gagare, an Indian inhabitant, residing of A-403, Om Sudarshan, Magathane, Road No.1, Borivali (E), Bombay-400066. .... Petitioner.

Versus

1. The Municipal Corporation of Greater Bombay, a body constituted under the Bombay Municipal Corporation Act, 1888 having its office at Mahapalika Bhavan, Mahapalika Marg, V.T. Bombay.

2. The Commissioner, Municipal Corporation of Greater Bombay having his office at Mahapalika Marg, Fort, Bombay- 400 001. .....Respondents.

Mr.Jokim Rais i/b V.A.Saudagare for the petitioner.
Mr.Vinod Mahadik for B.M.C.

CORAM: R.M.S.KHANDEPARKAR &
V.M.KANADE,JJ.

Date of hearing of last arguments : 28/09/2005.

Date of pronouncement of Judgment : 20.12.2005

-JUDGEMENT (PER V.M.KANADE, J)

1. By this Petition, the Petitioners are seeking appropriate Writ, order or direction quashing the Circular dated 11.8.92 and letter dated 29.9.92 issued by the Respondents.

2. Brief facts which are relevant for the purpose of

deciding the present Writ Petition are as under;

The Petitioner was appointed as a Junior Engineer on 1.6.1990 by Respondent No.2. He was initially appointed on probation for a period of two years and after completing the period of probation he was confirmed as Junior Engineer.

3. Before he was appointed as a Junior Engineer in the Municipal Corporation he was working with Maharashtra Housing Area Development Authority, hereinafter called as MHADA as a Junior Engineer since 1.12.1987. Before the Petitioner joined services in the Corporation he was pursuing AMIE degree course in Engineering and he had already passed Section A of the examination on 20.4.1988 and had appeared for Section B of the said examination in May 1989 and he had successfully passed the said examination and the results were declared on 4.10.1989. In the meantime after having appeared for Section B examination, he had applied for the post of Junior Engineer with the Respondent-Corporation on 23.5.1989. Interview was held in January 1990 and he joined services on 1.6.1990.

4. On 11.8.1992 the Municipal Corporation issued a

departmental Circular inviting applications from in-service Junior Engineers who had acquired higher qualification that is AMIE/Bacherlor degree in Engineering of the recognized University while in service for the purpose of preparing waiting list for the post of Sub-Engineers. The Petitioner by letter dated 29.9.1992 was informed by the Corporation that his application cannot be considered since he had not completed his AMIE while he was in service and therefore, he was not eligible as a departmental candidate.

5. The main grievance of the petitioner is that the impugned Circular dated 11.8.1992 makes distinction and discrimination between the in service candidates who have already acquired higher qualifications and those in service candidates who have acquired higher qualification while in service and seeks to give preferences to the in service candidates who have acquired higher qualifications while in service. The case of the petitioner is that this classification is arbitrary, discriminatory and hence therefore, violative of Article 14 of the Constitution of India.

6. The Respondents have filed their affidavit in reply dated 1st August 1984 and the Petitioner has filed

a rejoinder to the said application dated 7th September 2004. The Corporation in its affidavit in reply has stated that the hierarchy in the Engineering department and the first promotion after a person is appointed as a Junior Engineer is that of a Sub-Enginer. It is stated in the affidavit that the ratio of filling the said post is 1:1 and 50% are filled in by promotion and the remaining 50% are filled in by selection. It is stated that number of representations were made by the Municipal Junior Engineer's Union for making more avenues available for promoting in service employees to the post of Sub-Engineer. It is stated that therefore, 10% posts out of selection quota of 50% was carved out and made available to the departmental candidates working as Junior Engineers and those employees who had passed their B.E./A.M.I.E. examination whilst in service were made eligible for being appointed as Sub Engineer from the said 10% quota. It was contended in the affidavit that since the Petitioner had already passed his AMIE examination before he was appointed as a Junior Engineer, he would not get the benefit of the said Circular for the purpose of being appointed from the 10% quota.

7. The petitioner filed rejoinder and in that rejoinder he has annexed subsequent Circular dated

29.6.2001 of Respondent no.1. In this Circular the condition of passing higher qualification whist in service as a eligibility criteria was deleted. In the Rejoinder the petitioner has annexed the order whereby he was promoted as a Sub-Engineer with effect from 25.2.2004.

8. Short question which falls for consideration is, whether it is open for the Municipal Corporation to impose a condition of acquiring higher qualification whilst in service as an eligibility criteria for promotion. In our view submission made by the learned counsel for the petitioner will have to be accepted. Though it is open for the Corporation to provide more avenues for promotion to the in-service candidates, it would not be open for the Corporation to make distinction between two classes of Junior Engineers on the basis of time at which they have acquired higher qualification. In our view such classification would be clearly arbitrary and discriminatory as it is immaterial, when the condidates acquire higher qualification. There can be no justification for excluding those in-service candidates who already have acquired higher qualification from being denied chance of promotion by giving preference to in service candidates who have acquired

higher qualification after they have joined services of Respondent No.1. Such classification would clearly be against the mandate given by Article 14 of the Constitution of India. Subsequent events clearly show that the Corporation itself realised its own mistake and deleted the said condition in its subsequent Circular dated 29.6.2001. We have, therefore, no hesitation in holding that the impugned Circular dated 11.8.1992 is violative of Article 14 of the Constitution of India as it is arbitrary and discriminates two classes of in service candidates without any rational justification. The impugned Circular dated 11.8.92 is, therefore, quashed and set aside. The petitioner is already promoted to the post of Sub Engineer on 25.4.2004. Vide interim order dated 1st August 1984 Respondent was directed to keep one post of Sub Engineer from 10% quota and the quota reserved for in-service candidates till disposal of petition. The respondents are directed to consider whether the petitioner was entitled to be promoted at the relevant time. The Writ Petition is allowed in the aforesaid terms. Under such circumstances there shall be no order as to cost.

(R.M.S.KHANDEPARKAR,J)

(V.M.KANADE,J)